Supreme Court, U.S.
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NO. 93-27

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JOGANANDA HAZRA - PETITIONER

vs.

NATIONAL RX SERVICES, INC. - RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

REPLY TO BRIEF IN OPPOSITION 1

CONCLUSION 6

TABLE OF AUTHORITIES CITED

Page

CASES

Nix, Warden v. Whiteside, 475 U.S. 157, 166-171, 106 S. Ct. 988, 994-996 (1985) 5

Price Waterhouse v. Hopkins, 490 U.S. 228, 248-250, 109 S. Ct. 1775, 1789-1790 (1989) 4

United Brotherhood of Carpenters & Joiners of America v. Scott, 436 U.S. 825, 835 103 S. Ct. 3352, 3359 (1983) 5

STATUTES

United States Code

Title 28, Rule 11 ..... 5, 6
Title 28, Rule 59(e) 1
Title 28, Rule 60(b) 2
Title 28, F.R.A.P. Rule 38 6

United States Constitution

Title 42, Section 1985(3) 5

REPLY TO BRIEF IN OPPOSITION

Petitioner in response to respondent's brief in opposition states that respondent's counsel to mislead this Court in an utter desperation made meritless, frivolous, statements. Proof, presented as follows:

1. Respondent's counsel stated:
   "On June 29, 1993, petitioner filed in this Court his Petition for a Writ of Certiorari. The Petition is untimely pursuant to Sup. Ct. R. 13.1." (See Resp. Br. p. 3).

This is frivolous because docket entry shows Petition's filing date as May 18, 1993.

2. Respondent's counsel stated:
   "Here the district court and the court of appeals have repeatedly held on the undisputed facts that petitioner's claims of discrimination fail as a matter of law." (See Resp. Br. p. 12).

This again is frivolous because as shown in Petition for Writ of Certiorari, Statement of the Case pp. 10-11, paragraphs 7 & 8, that respondent's counsel and its Labor and Associate Counsel perpetrated fraud. And Smith realizing that although counsel perpetrated fraud but did not succeed in defrauding petitioner, then Smith in concert with Smith's associate attempted to deceive petitioner by and through counsel and Smith also in concert with Smith's associate misrepresented facts in magistrate's Orders, then Smith realizing that all of them failed in deceiving and defrauding petitioner, then Smith allowed counsel to file motion for summary judgment and granted respondent's motion for summary judgment, then Smith realizing from petitioner's Rule 59(e) motion that Smith and respondent's counsel failed in deceiving and defrauding petitioner then Smith perpetrated fraud about facts in Smith's Opinion and Order of February 12, 1991

(See Pet. pp. 15-16), and Smith considered diametrically opposite factors as one and the same (See Pet. pp. 16-18), and Smith under pretext of opinion violated rules of law to aid and abate respondent's counsel and respondent (See Pet. pp. 20-21), then Smith realizing from petitioner's Rule 60(b) motion that Smith got caught that Smith perpetrated fraud about facts in Smith's Opinion and Order of February 12, 1991, so, Smith abused discretion and to cover-up Smith's abuse of discretion misrepresented fact and denied petitioner's Rule 60(b) motion and imposed sanction (See Pet. pp. 15-16). This Court should note that Smith also considered irrelevant and immaterial matters to aid respondent's counsel and respondent because counsel quoting Smith stated:

> "Hazra was 47 years old when he was hired as a junior pharmacist by National Pharmacies, Inc., a co-subsidiary of National Rx, in April, 1983. Resp. App. 2a. Hazra has admitted that he was not discriminated against because of his age, race or national origin at the time of his hiring in 1983. Resp. App. 2a." (See Resp. Br. p. 6).

This is irrelevant and immaterial because as stated in Petition (See Pet. p. 4, lines 16-17), when petitioner was hired in 1983 by National Pharmacy, Elmwood Park, New Jersey, at that time National Pharmacy was under the umbrella of a separate corporation, i.e., people with different style and attitude. And not only respondent's counsel are up to their eyeballs in fraud, dirty tricks, and deception, but also counsel's law firm is involved because counsel's law firm handled all paper works. Note this was indicated to the appeals' court (See Pro Se Appellant's Brief filed August 28, 1992, pp. 5-6, answer to question 2). It should be noted that respondent's counsel nonsensically muttered and blabbed meritlessly all over Respondent's Brief. Proof, see counsel stated:

> "Hazra's motion, brief and affidavit contained nothing more than rambling unsupported alle-

gations of fraud against everyone who had argued or decided a motion unfavorably toward him." (See Resp. Br. pp. 14-15).

In this context this Court should note that the relevance of all those court cases cited by respondent's counsel to the facts of the instant case is questionable because that Mastini case cited at p. 18 & 20 of Respondent's Brief was cited by the appeals' court in support of its decision and petitioner analyzed and shown that the case has no bearing to the facts of the instant case (See Pet. p. 22).

3. Respondent's counsel stated:
"The Price Waterhouse decision, however, does not avail the petitioner's cause. While this issue was not an issue on appeal," (See Resp. Br. p. 28).

This, likewise, is frivolous because petitioner discussed "mixed motive" in appeals' court [See Pro Se Appellant's Brief filed August 28, 1992, pp. 9-10, answer to question 3; also see Brief in Support of the Motion to Vacate Judgment pp. 6-8 and Affidavit pp. 14-18, paragraphs 12 and 13, filed on January 31, 1992, with the motion under Rule 60(b)], note also it has been informed to this Court (See Pet. p. 20). In this context it should be noted that although respondent's counsel and its Labor and Associate Counsel perpetrated fraud in "Defendant's Response to Plaintiff's Interrogatories and Document Production Requests", but petitioner has evidence of disparate treatment with respect to conditioning, i.e., experimenting, with threat of termination to increase petitioner's production rate (See Pet. pp. 9-10, paragraph 6); that is, respondent has introduced bias into the experimental procedure. Therefore, on first impression though it may appear that respondent has to produce direct proof because respondent has to produce data but in reality it is not. Specially, because of the condition, that is, front end bias in conditioning, that is, experimenting on, petitioner with threat of termination to increase petitioner's production rate and again back end experimentation

on petitioner under pretext of giving an opportunity to correct by deliberately and maliciously shifting and setting the condition to 90 days, knowing that petitioner failed to catch an error within 30 days of the first Notice of Disciplinary Action. So, respondent has to first produce data to nullify the data which petitioner produced because the data that petitioner produced is the results of respondent's experimentation on petitioner. And this Court should note that respondent has to bring data to nullify the data that petitioner produced because respondent by illegitimate means created a situation to legitimize illegitimate acts. And after respondent nullify the data then would come the question of opportunity for respondent to consider to terminate petitioner. This Court should note that it is consistent with the guideline set forth by this Court referring to its previous rulings involving "mixed-motives" in Price Waterhouse [See Price Waterhouse v. Hopkins, 490 U.S. 228, 248-250, 109 S. Ct. 1775, 1789-1790 (1989)].

4. Respondent's counsel stated:
"Hazra admitted in his own testimony that he had no direct evidence of discrimination by National Rx. Resp. App. 28a. Thus, the deathknell to this belated and unavailing argument is Hazra's own testimony." (See Resp. Br. pp. 28-29).

This again is meritless because it is irrelevant and immaterial although the statement is true in part. Because petitioner was deposed at a time when petitioner's interrogatories were pending with respondent's counsel. That is, petitioner was deposed at a time when petitioner was trying to discover. In this context note what this Court stated about discovery process in footnote 12 in Price Waterhouse (See Pet. p. 18). And after deposing petitioner respondent's counsel in response to petitioner's interrogatories perpetrated fraud in "Defendant's Response to Plaintiff's Interrogatories and Document Production Requests". That respondent's counsel involved in perpetrating fraud in "Defendant's Response to Plaintiff's Interrogatories and Docu-

ment Production Requests" because of the following facts: (a) nobody but respondent's counsel knew what was in petitioner's interrogatories because it was sent to respondent's counsel; (b) counsel held on to petitioner's interrogatories and when deposed petitioner, deposed petitioner from petitioner's own questions and learned from petitioner what respondent did and attempted to do by and through which agents and, respondent's counsel also had with counsel respondent's Labor and Associate Counsel; (c) it was respondent's counsel who mailed to petitioner the above titled paper; (d) counsel in response to petitioner's "Motion to Compel Answer to Interrogatories by Plaintiff " did not make any change in answer, just submitted a verification page with respondent's Labor and Associate Counsel's name. It should be noted that the foregoing are just facts. Then, there are laws which would put respondent's counsel in the center of it all. Laws like F.R.C.P. Rule 11 and this Court's ruling about ABA Canon in Nix, Warden v. Whiteside, 475 U.S. 157, 166-171, 106 S.Ct. 988, 994-996 (1985). Finally, respondent's counsel could have made counsel's claim of innocence believable if respondent's affiant-deponent, Jack Siddle, in his affidavit would have stated that petitioner was not experimented on with threat of termination to increase petitioner's prescription checking rate or on the date of termination they did not attempt to blackmail petitioner. Note respondent's affiant-deponent, Jack Siddle, has not said anything of that sort to vindicate counsel (See Affidavit submitted in support of Defendant's Motion for Summary Judgment). Furthermore under law, since all of them conspired to violate petitioner's U.S. Constitutional Rights to equal protection and equal privileges under the law because of petitioner's race and national origin (See Pet. pp. 24-25) and, since this is continuous from the time petitioner filed the lawsuit in the district court and, since this Court in Scott quoting Griffin ruled that in order to be actionable under 42 U.S.C. Section1985(3) a conspiracy, "must aim at a deprivation of the equal enjoyments of rights secured by the law to all." [See United Brotherhood of Carpenters & Joiners of America v. Scott, 436 U.S. 825, 835, 103 S.Ct. 3352, 3359 (1983)]. And Scott specifically recognized that such rights can arise from state law (Id., at 833, 3359). Therefore, under state law petitioner

would bring them all (i.e., respondent, its affiant-deponent, its Labor and Associate Counsel, its counsel and their law firm) for conspiracy to violate petitioner's state's civil rights laws and conspiracy to violate petitioner's state's tort laws. And under state's tort laws petitioner would bring them all for deliberately and maliciously experimenting on Petitioner to defame and ultimately for defamation; intentional infliction of mental and emotional distress; fraud and dirty tricks.

In summary, for the foregoing reasons and reasons set forth in Petition, as requested in Petition (See Pet. pp. 26-27) this Court should vacate and reverse the appeals' court decision of 1993 because justice demands reversal. And this Court should include in its direction to the appeals' court all those that have been requested in the Petition including double the amount on costs related to the lawsuit. This Court should award double costs because counsel in concert with respondent's Labor and Associate Counsel: (a) perpetrated fraud in "Defendant's Response to Plaintiff's Interrogatories and Document Production Requests"; (b) destroyed discoverable evidence; (c) perpetrated dirty tricks in "Stipulation"; (d) filed summary judgment motion; (e) now filed F.R.C.P. Rule 11 motion and F.R.A.P. Rule 38 motion.

CONCLUSION

Petition for a writ of certiorari should be granted as requested in the Petition.

Respectfully submitted,

Jogananda Hazra

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Petitioner, pro se